

**CALENDAR ITEM
73**

A Statewide

04/06/11

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PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been reviewing various legislative proposals introduced in the current session that may affect the State Lands Commission's authority or functions. This report describes Senate Bill (SB) 876, analyzes its impacts and sets forth a recommendation for the Commission to consider.

LEGISLATIVE PROPOSAL:

Senate Bill 876 (Harman): Protective Structures

SUMMARY:

SB 876 would require the Commission to lease tide and submerged lands to a littoral owner for shore protection structures only on the following terms: a) a 99 year term; and, b) rent consideration for the lease may be adjusted only once during an undetermined number of years and require any adjustment in rent be based on the California Consumer Price Index (CPI).

ANALYSIS:

The Commission's predecessor agency, the Division of State Lands, was first authorized to issue protective structure permits in 1931. Pursuant to Public Resources Code section 6321, the Commission has the express authority to grant private property owners the right to build and maintain shore protection structures or seawalls on tidelands, if the structures do not unreasonably interfere with the uses and purposes reserved to the people of the state. The Commission may also fix and collect reasonable charges or rentals for the use of lands on which the structures are located. (Public Resources Code section 6321.2.) Pursuant to Title 2, Division 3, Section 2004 of the California Code of Regulations, the Commission is limited to issuing leases for terms in excess of 49 years.

The shore protection structures contemplated by SB 876 are structures placed on State tidelands for the direct benefit of private property owners to the detriment of the people of California who will have diminished access and use of those tidelands. The Commission must have the ability to set the length of the lease and to ensure that the State is being fairly compensated for the private use of public property.

CALENDAR ITEM NO. 73 (CONT'D)

SB 876 would inappropriately limit the Commission's discretion when issuing leases to private property owners for shore protection structures. If SB 876 were enacted, the Commission would be required to issue such leases only for 99 years, in direct conflict with its current regulatory mandate. The Commission would also be limited in rental rate adjustments during those 99 years. Specifically, the Commission could only adjust the rental rate once every undetermined number of years; the number of years is left blank in the current version of the bill. Additionally, the rent could only be adjusted by the CPI instead of using the Commission's normal process of appraising the land to determine the fair market value. The CPI measures the price level of consumer goods and services and has no correlation to property values. While the CPI might be a useful tool for adjusting rental rates on a relatively short term lease, it is not an appropriate basis for rent adjustments on a lease lasting 99 years because the CPI will likely have no relation to the fair market value of that property in 99 years.

Staff believes that SB 876, if enacted, would also be in violation of the California Constitution, particularly, Article 10, Section 3 which prohibits the alienation of tidelands and Article 16, Section 6, which prohibits the gift of public funds. A 99 year lease could be considered tantamount to the alienation of state tidelands. Limiting the Commission's ability to receive fair compensation for the use of state lands could be considered a gift of public funds to those private property owners.

In conclusion, SB 876 seeks to limit the Commission's discretion to determine a reasonable lease term and rent review process for use by private entities of State Property for shoreline protective structures.

OTHER PERTINENT INFORMATION:

California Environmental Quality Act (CEQA) compliance: Staff has determined this action by the Commission is not subject to the provisions of CEQA because it is not a "project" as defined in Section 15378 of the State CEQA Guidelines (Title 14, California Code of Regulations, section 15000 et seq.). Specifically, the proposed action by the Commission to oppose SB 876 has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is not subject to the requirements of CEQA because the activity is not a project as defined in Section 21065 of CEQA and Section 15378 of the State CEQA Guidelines;
2. Oppose SB 876, which as proposed, seeks to limit the Commission's discretion in issuing leases and setting appropriate rent for shoreline protective structures.